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Amendments to Rules Concerning References to the Code of Federal Regulations (CFR)  
LSA Document #06-412 (APCB)

### Overview

Amends 326 IAC 1-1-3 to update “References to the Code of Federal Regulations (CFR)” to mean the 2006 edition. Additionally, deletes throughout Title 326 references to the Federal Register that are redundant as a result of the update to the References to the Code of Federal Regulations.

### Citations Affected

Amends: 326 IAC 1-1-3; 326 IAC 1-2-33.5; 326 IAC 1-2-48; 326 IAC 1-2-90; 326 IAC 11-8-1; 326 IAC 11-8-2; 326 IAC 12-1-1; 326 IAC 20-27-1; 326 IAC 20-33-1; 326 IAC 20-48-1; 326 IAC 20-49-1; 326 IAC 20-50-1; 326 IAC 20-51-1; 326 IAC 20-52-1; 326 IAC 20-53-1; 326 IAC 20-54-1; 326 IAC 20-55-1; 326 IAC 20-56-1; 326 IAC 20-57-1; 326 IAC 20-60-1; 326 IAC 20-61-1; 326 IAC 20-62-1; 326 IAC 20-63-1; 326 IAC 20-64-1; 326 IAC 20-65-1; 326 IAC 20-66-1; 326 IAC 20-67-1; 326 IAC 20-68-1; 326 IAC 20-69-1; 326 IAC 20-70-1; 326 IAC 20-71-1; 326 IAC 20-72-1; 326 IAC 20-73-1; 326 IAC 20-74-1; 326 IAC 20-75-1; 326 IAC 20-76-1; 326 IAC 20-77-1; 326 IAC 20-78-1; 326 IAC 20-79-1; 326 IAC 20-82-1; 326 IAC 20-83-1; 326 IAC 20-84-1; 326 IAC 20-85-1; 326 IAC 20-86-1; 326 IAC 20-87-1; 326 IAC 20-88-1; 326 IAC 20-90-1; 326 IAC 20-91-1; 326 IAC 20-92-1; 326 IAC 20-93-1; 326 IAC 20-94-1.

### Affected Persons

All stakeholders will benefit from this rulemaking since state standards that are incorporated by reference will be consistent with federal standards.

### Reason or Reasons for the Rule

The purpose of the state rulemaking is to provide consistency between federal and state rules.

### Economic Impact of the Rule

Updating “References to Code of Federal Regulations” to mean the July 1, 2006 edition will have a positive effect on business, local governments, and citizens by ensuring that state and federal rules are consistent. Although there may be costs to comply with the rules that have been incorporated by reference, the costs are due to the federal regulations themselves and no additional costs will be incurred as a result of updating the reference to the CFR.

### Benefits of the Rule

By annually updating the “Reference to the Code of Federal Regulations” federal requirements that have been incorporated by reference into state rules are revised if they have been revised in a federal rulemaking action.

### Description of the Rulemaking Project

326 IAC 1-1-3, Reference to the Code of Federal Regulations (CFR), indicates the yearly edition of the CFR that is applicable to rules that have been incorporated by reference throughout Title 326 of the Indiana Administrative Code (IAC), unless a different edition is specified in a given rule. By annually updating the reference to the CFR, IDEM is able to incorporate by reference the latest version of the parts of the CFR already incorporated into the air rules, with the exception of those most recently published in the Federal Register (FR).

The 2006 edition of the CFR is a codification of the general and permanent rules published in the FR as of June 30, 2006. IDEM incorporates citations by reference from Titles 29 and 40 of

the CFR.

Title 29 of the CFR, entitled “Intergovernmental Review of Environmental Protection Agency Programs and Activities” contains federal rules for the asbestos and lead programs. Title 29 of the CFR is referenced in 326 IAC 14 (Emission Standards for Hazardous Air Pollutants), 326 IAC 20 (Asbestos Management), and 326 IAC 23 (Lead-Based Paint Program). Many of these regulations are either directly incorporated by reference into Title 326 of the IAC as state-enforceable rule provisions or they are incorporated into Title 326 of the IAC as federal authority for the implementation and enforcement of state rule provisions.

Title 40 of the CFR entitled “Protection of Environment,” includes all federal environmental regulations promulgated by the U.S. Environmental Protection Agency (U.S. EPA). It is referenced throughout Title 326 of the IAC.

The latest version of the CFR adopted by the Air Pollution Control Board is dated July 1, 2005. Since that date, a number of new federal rules have been promulgated that were incorporated by reference into state rules using their FR citation; these FR citations are now redundant and will therefore be deleted. Additionally there are Federal Register citations throughout Title 326 that are now redundant. The department proposes to delete these citations also.

The following is a non-exhaustive list of examples of rules and changes that occurred between July 1, 2005, and June 30, 2006, that will be automatically updated with the update to the CFR definition:

- On July 11, 2005, U.S. EPA in a final rule amended Table 1 of Subpart B of Part 63 to reflect the revised Section 112(j) Part 2 application due date from a recently amended consent decree. The final rule amendment (and amended consent decree) relates to boilers and hydrochloric acid production furnaces that burn hazardous waste. 70 FR 39664; July 11, 2005. *Citation Affected:* 326 IAC 2-4.1-1.
- On November 13, 2003, U.S. EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for surface coating of metal cans (68 FR 64432). The final rule (40 CFR Part 63, Subpart KKKK) includes standards for hazardous air

pollutants (HAP), as well as monitoring, performance testing, record keeping, and reporting requirements related to the standards. After promulgation of the final rule, U.S. EPA received numerous questions related to the rule interpretation. The questions pointed out minor inconsistencies in some of the rule language and equations and identified areas where the rule requirements were not clear. On January 6, 2006, U.S. EPA took direct final action on amendments to resolve inconsistencies and clarify rule language. 71 FR 1384; January 6, 2006. *Citation Affected:* 326 IAC 20-86-1.

- On April 16, 2003, U.S. EPA promulgated the NESHAP for new and existing refractory products manufacturing facilities as 40 CFR Part 63, Subpart SSSSS. Shortly after, U.S. EPA also promulgated amendments to the general provisions of 40 CFR Part 63. U.S. EPA then identified minor technical errors and other specific sections of the refractory products manufacturing NESHAP that needed clarification. These amendments to the refractory products manufacturing NESHAP clarify the requirements for testing, control device operation, operating limits, and monitoring. 71 FR 7423-7440; February 13, 2006. *Citation Affected:* 326 IAC 20-62-1.
- U.S. EPA promulgated the NESHAP for miscellaneous organic chemical manufacturing on November 10, 2003 (40 CFR Part 63, Subpart FFFF). On July 1, 2005, U.S. EPA issued direct final amendments to the NESHAP. On August 30, 2005, U.S. EPA withdrew certain amendments due to adverse written comments. Amendments that were not commented on became effective on August 30, 2005, and included clarifying the compliance requirements for flares and the alternative standard, extending the vapor balancing alternative to cover transfers from barges to storage tanks, amending the procedures for correcting measured concentrations at the outlet of combustion devices to correct for dilution by supplemental gas, and clarifying the signature requirements for the notification of compliance status report. *Citation Affected:* 326 IAC 20-84-1.
- U.S. EPA took direct final rule action on amendments to the NESHAP for cellulose products manufacturing, which were issued on

June 11, 2002, under Section 112 of the Clean Air Act. The amendments revise the work practice standards, general and initial compliance requirements, definitions, and general provisions applicability, as well as correct typographical, formatting, and cross-referencing errors in the final rule. 70 FR 46694-46699; August 10, 2005. *Citation Affected:* 326 IAC 20-54-1.

- U.S. EPA promulgated the NESHAP for reinforced plastic composites production on April 21, 2003. The final rule (40 CFR Part 63, Subpart WWW) includes standards for hazardous air pollutants, as well as monitoring, performance testing, record keeping, and reporting requirements related to those standards. The U.S. EPA received questions regarding rule interpretation about some of the tables and rule language. The direct final amendments revise compliance options for open molding, correct errors, and add clarification to sections of the rule. 70 FR 50129-50135; August 25, 2005. *Citation Affected:* 326 IAC 20-56-1.
- The following are amendments to NESHAPs that have been finalized between July 1, 2005, and June 30, 2006, under Section 112(f) of the Clean Air Act (the Residual Risk Program) to add health based emission requirements or a Section 112(d)(6) technology review:
  - 1) April 7, 2006 (71 FR 17729) Industrial Process Cooling Towers. 40 CFR Subpart Q, incorporated by reference at 326 IAC 20-4. Amends the applicability section to clarify that chromium based water treatment chemicals are subject to the rule; other industrial process cooling towers are not covered; no new requirements due to residual risk.
  - 2) April 6, 2006 (71 FR 17362) Gasoline Distribution Facilities. 40 CFR Subpart R, incorporated by reference at 326 IAC 20-10. No amendments due to residual risk or Section 112(d)(6) technology review; amends a reference error.
  - 3) April 7, 2006 (71 FR 17745) Hydrochloric Acid Production 40 CFR NNNNN, incorporated by reference at 326 IAC 20-76. Amends the NESHAP for hydrochloric acid production facilities including Hcl production fume silica facilities. The amendments to the rule clarify certain applicability provisions, emission standards and testing, maintenance, and

reporting requirements. The amendments also correct several omissions and typographical errors in the final federal rule.

- May 10, 2006 (71 FR 27332) Standards of performance for new stationary sources and emission guidelines for existing sources: large municipal waste combustors. U.S. EPA promulgated standards for municipal waste combustors (MWC) units in 1995 and implemented them in 2000. The Clean Air Act (CAA) requires review of these standards every 5 years. The review is to be conducted in accordance with CAA Section 129 and Section 111 requirements, with standards revised as necessary. For existing MWC units, the goal of this action is to amend the standards to reflect the actual performance levels being achieved by existing MWC units. For new MWC units, the goal of this action is to amend the standards to reflect the performance level achievable by MWC units constructed in the future. Other technical improvements were made to the standards for MWC units. Amendments were made to 40 CFR 60 Subpart Cb and Subpart Eb. The update of the References to the Code of Federal Regulations definition will only update the compliance testing and operator training revisions for existing sources in 326 IAC 11-7 and new source performance standard provisions in 326 IAC 11-7. The emissions limits and compliance schedule for existing municipal waste combustors that are not incorporated by reference in 326 IAC 11-7 will be amended in a separate rulemaking. *Citation Affected:* 326 IAC 11-7 and 326 IAC 12.

### **Scheduled Hearings**

First Public Hearing: December 6, 2006 at 1:00 p.m., at the Indiana Government Center - South 402 West Washington Street, Indianapolis, Indiana 46204.

### **Consideration of Factors Outlined in Indiana Code 13-14-8-4**

Indiana Code 13-14-8-4 requires that in adopting rules and establishing standards, the board shall take into account the following:

- 1) All existing physical conditions and the character of the area affected.
- 2) Past, present, and probable future uses of

the area, including the character of the uses of surrounding areas.

3) Zoning classifications.

4) The nature of the existing air quality or existing water quality, as appropriate.

5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.

6) Economic reasonableness of measuring or reducing any particular type of pollution.

(7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to:

(A) human, plant, animal, or aquatic life; or

(B) the reasonable enjoyment of life and property.

### **Consistency with Federal Requirements**

The new rule is consistent with federal rules.

### **Rulemaking Process**

The first step in the rulemaking process is publication of one of three types of notices in the *Indiana Register*. The first type of notice is a first notice of comment period. The first notice of comment period includes a discussion of issues and opens a first comment period. A second notice is then published which contains the comments and the department's responses from the first comment period, a notice of first meeting/hearing, and the draft rule. The second type of notice is a section 7 notice. A section 7 notice contains a determination by the commissioner under IC 13-14-9-7 that only one comment period is required. It contains the commissioner's determination and findings, the draft rule, a request for written comments and a notice of first meeting/hearing. The third type of notice is a section 8 notice. A section 8 notice contains a determination by the commissioner under IC 13-14-9-8 that no public comment periods are required. It contains the commissioner's determination and findings, the draft rule and a notice of first meeting/hearing. In each case the Air Pollution Control Board holds the first meeting/hearing and public comments are heard. The proposed rule is published in the *Indiana Register* after preliminary adoption along with a notice of second meeting/hearing. If the proposed rule is substantively different from the draft rule, a

third comment period is required. The second public meeting/hearing is held and public comments are heard. Once final adoption occurs, the rule is reviewed for form and legality by the Attorney General, signed by the Governor, and becomes effective 30 days after filing with the Publisher. This rulemaking was initiated with a section 8 notice.

### **IDEM Contact**

Additional information regarding this rulemaking action can be obtained from Pat Troth, Rule Development Section, Office of Air Quality, (317) 233-5681 or (800) 451-6027 (in Indiana).